

REMARKS

Reconsideration of the application is respectfully requested in view of the terminal disclaimer and statement under 37 C.F.R. § 3.73(b) filed with this paper and the discussion presented below.

Claims 1-4, 6, and 7 are now present in this application.

Discussion

The Examiner mailed a PTOL-413 summary of the telephone interview of March 28, 2007 with the undersigned attorney. The Examiner's summary of the substance of the interview is believed to be correct.

Claims 1 and 7 were rejected on the ground of non-statutory or obviousness double patenting as being unpatentable over claims 1, 11, and 12 of U.S. patent application 10/627,081.

A rejection based on a nonstatutory type of double patenting can be avoided by filing a terminal disclaimer in the application or proceeding in which the rejection is made. M.P.E.P. § 804.02 (citing *In re Vogel*, 422 F.2d 438, 164 U.S.P.Q. 619 (CCPA 1970); *In re Knohl*, 386 F.2d 476, 155 U.S.P.Q. 586 (CCPA 1967); and *In re Griswold*, 365 F.2d 834, 150 USPQ 804 (C.C.P.A. 1966)). Section 804.02 of the M.P.E.P. notes that the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection.

Applicants enclose the assignee's disclaimer of the terminal part of the statutory term of any patent which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference application number 10/627,081. This is

an executed form PTO/SB/25. A statement under 37 C.F.R. § 3.73(b) is also included in order to establish the right of the assignee to take this action.

The rejection of claims 1 and 7 on the ground of non-statutory or obviousness double patenting should be withdrawn.

The Examiner explained during the telephone interview of March 28, 2007 that the status of the remaining claims, claims 2-4 and 6, was "objected-to" due to being dependent on a rejected base claim (claim 1). Claim 1, as shown above, is allowable. It is respectfully submitted that claims 2-4 and 6 are allowable at least in view of their dependency on claim 1. The objection to claims 2-4 and 6 should be withdrawn.

Conclusion

In view of the above, the Applicants submit that the application is now in condition for allowance and respectfully urge the Examiner to pass this case to issue. The Examiner is respectfully invited to telephone the undersigned attorney as needed in order to advance the examination of this application.

* * *

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being deposited with the United States Post Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 19, 2007.

Lucy C. Derby

(Name of Person Transmitting)


(Signature)

June 19, 2007

(Date)

Respectfully submitted,



R. Dabney Eastham

Attorney for Applicants

Reg. No. 31,247

LADAS & PARRY LLP

5670 Wilshire Boulevard, Suite 2100

Los Angeles, California 90036

(323) 934-2300 voice

(323) 934-0202 facsimile

reastham@ladas.com

encls. terminal disclaimer
statement under 37 C.F.R. § 3.73(b)
return receipt postcard